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10/040,379	01/09/2002	Takashi Kondo	24540-20004.00	5474
25227	7590	01/25/2007	EXAMINER	
MORRISON & FOERSTER LLP 1650 TYSONS BOULEVARD SUITE 300 MCLEAN, VA 22102			PHAM, HUNG Q	
			ART UNIT	PAPER NUMBER
			2168	
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
3 MONTHS	01/25/2007	PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/040,379	KONDO ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	HUNG Q. PHAM	2168	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 02 November 2006.  
 2a) This action is **FINAL**.                  2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 23-28 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 23-28 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
     1. Certified copies of the priority documents have been received.  
     2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
     3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.<br>_____                                                | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Response to Arguments***

Applicants' arguments with respect to claims 23-28 have been fully considered but they are not persuasive.

As argued by applicants:

- At page 4 with respect to claim 23:

*Claim 23 recites "a controller for cutting out image data corresponding to the registered image data and retrieving a desired image data containing image data which is identical or analogous to the image data cut out from the database." Kinjo, the sole reference cited in the prior art rejection of the previous claims, fails to disclose or suggest this feature.*

*... The extracted figures in Kinjo do not correspond to image data cut out of the registered (original) image data. The image data cut out according to claim 1 corresponds to actual image data, not geometric shapes that match the original image data. Kinjo fails to teach or suggest cutting out actual image data from the image. Thus, Kinjo fails to teach or suggest the features of claim 23.*

- At page 4 with respect to claim 24:

*Claim 24 recites that "the image corresponding to the image area is an image of a face of a person." Kinjo fails to teach or suggest this feature as well. At best, Kinjo would extract a circle which corresponded to the face of a person, but Kinjo fails to teach or suggest cutting out the image of a face of a person from the image data. The actual face is cut out according to claim 24, not a shape which is similar to the shape of a face. For at least this reason, Kinjo fails to teach or suggest the features of claim 24.*

- At page 5 with respect to claim 25:

*... Like claim 23, claim 25 recites cutting out object image data, which is not disclosed or suggested by Kinjo. Kinjo may extract a shape of the image data, but does not cut out the actual image data. Thus, for the reasons set forth above, Kinjo fails to teach or suggest the features of claim 25.*

- At page 5 with respect to claims 26-28:

*Claim 26 is allowable at least due to its dependency and in light of the remarks set forth above in connection with claim 24. A claim 27 is allowable because it is a method claim which recites substantially the same features recited in claim 24. Claim 28 is a computer-readable medium claim which recites substantially the same features recited in claim 24, and is therefore allowable for the same reasons claim 24 is allowable.*

Examiner respectfully disagrees.

- Paragraphs 0044-0065 are used as supportive evidences for new claims 23-28.

However, nowhere in Paragraphs 0044-1165 have the description of the claimed limitation *cutting out image data corresponding to the registered image data.*

For the purpose of examination, Paragraph 0061 of the Specification is used to interpret this claimed limitation:

*Initially a user positions a mouse pointer on the face of a person appearing in an image displayed on the listing window or the such result window and thus drags the mouse pointer. In response at step S500 a face image is cut out. This face image contains a drag coordinate indicating a position of the image designated and dragged with the mouse pointer.*

As disclosed by Kinjo, FIG. 1 is an original image that is supplied from an image data source (Col. 10 Lines 36-37), and a user could designate searching patterns with an image designating device, e.g., a mouse (Col. 10 Lines 39-45) and the predetermined specific figures, e.g., circles, triangles and rectangles, are extracted from the original image in FIG. 1 (Col. 10 Lines 45-51). As shown in TABLE 1 of Col. 13, an example of the result of extracting three kinds of specific figures from the original image in FIG. 1 with the coordinates of the specific figures (Col. 13 Lines 16-40). As seen, specific figures, e.g., circles, triangles and rectangles, as *image data* are extracted or *cut out*, and the specific figures or *image data corresponding to the coordinates of the specific figures in TABLE 1 as registered imaged data*. Kinjo further discloses the step of

*retrieving a desired image data containing image data which is identical or analogous to the image data cut out from the database at Col. 13 Lines 50-65.*

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., *actual face is cut out according to claim 24, not a shape which is similar to the shape of a face*) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

- As discussed above, a user could designate searching patterns with an image designating device, e.g., a mouse (Col. 10 Lines 39-45), wherein the searching patterns, e.g., circles, triangles and rectangles, are designated as in FIG. 2 (Col. 10 Lines 45-51). As shown in TABLE 1 of Col. 13, an example of the result of extracting the areas of three kinds of specific figures from the original image in FIG. 1 with the coordinates of the specific figures (Col. 13 Lines 16-40). As seen, the Kinjo technique as discussed indicates areas of specific figures, e.g., circles, triangles and rectangles, as *image data* are extracted or *cut out*. The areas of specific figures or *image data* corresponds to the searching patterns, e.g., circles, triangles and rectangles, of the image of FIG. 1 as *the designated image area of the registered image*

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., *cut out the actual image data*) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

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- Claims 26 is unpatentable at least due to its dependency and in lights of the teaching of Kinjo as discussed above with respect to claim 24. Claims 27 and 28 are unpatentable because they are method and program claims that recite substantially the same features recited in claim 24.

### ***Claim Objections***

Claim 23 is objected to because of the following informalities: *image date retrieval apparatus* at line 1 and *the image database* at line 3 (*image data retrieval apparatus* and *the database* are respectfully suggested). Appropriate correction is required.

Claim 26 is objected to because of the following informalities: *imago of face* (*image of a face* is respectfully suggested). Appropriate correction is required.

### ***Duplicate Claims, Warning***

Applicant is advised that should claim 25 be found allowable, claim 23 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

**Claims 23 and 25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.**

As in claim 23, the claimed limitation, cutting out image data corresponding to the registered image data, was not described in the specification.

As in claim 25, the claimed limitation, designating a point in an object image corresponding to the object image data included in the registered image, was not described in the specification.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

As in claim 23, the clause *the registered image data* at line 6 references to other items in the claim. It is unclear what item is being referenced.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 23-28 are rejected under 35 U.S.C. 102(e) as being anticipated by Kinjo [USP 6,813,395 B1].**

Regarding claim 23, Kinjo teaches an apparatus for retrieving image data (Abstract) comprising:

*a database for registering a plurality of images* (Col. 10 Lines 34-39);

*a display unit for displaying an image registered in the image database* (FIG. 1, Col. 36-37);

*a designator for designating an image area of the registered image displayed on display unit* (FIG. 2, Col. 10 Lines 39-45); and

*a controller for cutting out image data corresponding to the registered image data* (a user could designate searching patterns with an image designating device, e.g., a mouse (Col. 10 Lines 39-45) and the predetermined specific figures, e.g., circles, triangles and rectangles, are

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extracted from the original image in FIG. 1 (Col. 10 Lines 45-51). As shown in TABLE 1 of Col. 13, an example of the result of extracting three kinds of specific figures from the original image in FIG. 1 with the coordinates of the specific figures (Col. 13 Lines 16-40). As seen, specific figures, e.g., circles, triangles and rectangles, as *image data* are extracted or *cut out*, and the specific figures or *image data corresponding to the coordinates of the specific figures in TABLE 1 as registered imaged data*) and

*retrieving a desired image data containing image data which is identical or analogous to the image data cut out from the database* (Col. 13 Lines 50-65).

Regarding claim 25, Kinjo teaches *an image data retrieval apparatus for retrieving image data including object image data from an image database having a plurality of images registered therein* (Abstract), comprising:

*a display unit for displaying an image registered in the image database* (FIG. 1, Col. 36-37);  
*a pointing device for designating a point in an object image corresponding to the object image data included in the registered image displayed on the display unit* (A user could designate searching patterns with an image designating device, e.g., a mouse (Col. 10 Lines 39-45). As in FIG. 1, a plurality of *object images* is shown, e.g., triangular mountain, face and trunk of a person (Col. 10 Lines 56-59). As in FIG. 2, searching patterns, e.g., circles, triangles and rectangles, as *object image data* is included in the image of FIG. 1 as *the registered image displayed on the display unit*. As seen, by using a mouse to extract a circle, a starting *point in object images*, e.g., triangular mountain, face and trunk of a person, must be *designated* by a user); and

*a controller for analyzing a pixel located in a vicinity of the point designated by the pointing device* (As further disclosed by Kinjo at Col. 12 Lines 52-56, center position of searching patterns, e.g., circles, triangles and rectangles, as *a pixel located in a vicinity of the point designated by the pointing device is recognized of analyzed*) and

*cutting out the object image data as a retrieval key image based on the result of the analyzing (As shown in TABLE 1 of Col. 13, an example of the result of extracting the areas of three kinds of specific figures from the original image in FIG. 1 with the coordinates of the specific figures (Col. 13 Lines 16-40). As seen, specific figures, e.g., circles, triangles and rectangles, as object image data as a retrieval key image are extracted or cut out based on the result of the analyzing) and retrieving a desired image data containing the object image identical or analogous to the database by comparing said retrieval key image cut out to at least one other image (Col. 13 Lines 50-65).*

Regarding claim 27 and 28, Kinjo teaches a method and program for retrieving image data (Abstract) comprising:

*registering a plurality of images in a database (Col. 10 Lines 34-39); displaying an image registered in the database on a display unit (FIG. 1, Col. 36-37); designating an image area of the registered image displayed on display unit (FIG. 2, Col. 10 Lines 39-51); and*

*cutting out image data corresponding to the designated image area of the registered image (a user could designate searching patterns with an image designating device, e.g., a mouse (Col. 10 Lines 39-45), wherein the searching patterns, e.g., circles, triangles and rectangles, are designated as in FIG. 2 (Col. 10 Lines 39-51). As shown in TABLE 1 of Col. 13, an example of the result of extracting the areas of three kinds of specific figures from the original image in FIG. 1 with the coordinates of the specific figures (Col. 13 Lines 16-40). As seen, the Kinjo technique as discussed indicates areas of specific figures, e.g., circles, triangles and rectangles, as image data are extracted or cut out. The areas of specific figures or image data corresponds to the searching patterns, e.g., circles, triangles and rectangles, as the designated image area of the registered image) and*

*retrieving a desired image data containing image data which is identical or analogous to the image data cut out from the database* (Col. 13 Lines 50-65).

Regarding claims 24 and 26, Kinjo teaches all of the claimed subject matter as discussed above with respect to claims 23 and 25, Kinjo further discloses *the image corresponding to the image area is an image of a face of a person* (FIG. 1 and 2, the image 12 of FIG. 1 corresponds to the specific figure 22 is a face of a person).

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUNG Q. PHAM whose telephone number is 571-272-4040. The examiner can normally be reached on Monday-Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, TIM T. VO can be reached on 571-272-3642. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



HUNG Q PHAM  
Examiner  
Art Unit 2168

January 11, 2007